(3)

No. 01-902

In The

Supreme Court of the United States

CITY OF TAMPA, FLORIDA,

Petitioner,

v.

VOYEUR DORM, L.C., ENTERTAINMENT NETWORK, INC., AUTUMN DAWN MARENGER AND 2D&H, INC.,

Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Eleventh Circuit

REPLY BRIEF OF PETITIONER IN RESPONSE TO BRIEF IN OPPOSITION

JAMES D. PALERMO, City Attorney
GINA K. GRIMES
Chief Assistant City Attorney
JERRY M. GEWIRTZ
Assistant City Attorney
Counsel of Record
Fifth Floor, City Hall
315 E. Kennedy Blvd.
Tampa, Florida 33602
(813) 274-8996

Attorneys for Petitioner

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
OR CALL COLLECT (402) 342-2831

1 - 59 pp

TABLE OF CONTENTS

Page

TABLE OF CONTENTS i

TABLE OF AUTHORITIES ii

TABLE OF APPENDICES iii

ARGUMENTS IN RESPONSE TO BRIEF IN OPPOSITION 1

I. THE JUDGMENT OF THE COURT OF APPEALS IS FINAL AND A MANDATE HAS BEEN ISSUED 1

II. THERE ARE NO GENUINE ISSUES OF MATERIAL FACT WHICH CAUSED THE ELEVENTH CIRCUIT TO REVERSE THE DISTRICT COURT'S ORDER 2

III. THE CITY IS NOT REGULATING THE INTERNET; RATHER THE CITY IS SIMPLY REGULATING THE LOCATION OF AN ADULT USE BUSINESS 3

IV. THE ISSUES PRESENTED ARE OF EXCEPTIONAL IMPORTANCE AND OF NATIONAL SIGNIFICANCE 6

CONCLUSION 8

APPENDIX A ..... App. 1

APPENDIX B ..... App. 3

TABLE OF AUTHORITIES

Page

CASES

City of Erie v. Pap's A.M., 529 U.S. 277 (2000) 7

City of Renton v. Playtime Theatres, Inc., 475 U.S. 41 (1986) 4, 5, 6, 7

Reno v. American Civil Liberties Union, 521 U.S. 844 (1997) 4, 5

United States v. Playboy Entertainment Group, Inc., 529 U.S. 803 (2000) 5

Young v. American Mini Theatres, Inc., 427 U.S. 50 (1976) 4, 7

OTHER AUTHORITIES

28 U.S.C. § 1254(1) 1

TABLE OF APPENDICES

Page

APPENDIX A – Judgment issued as a Mandate on December 10, 2001 .....App. 1

APPENDIX B – City's Statement of Undisputed Facts in Support of City's Motion for Final Summary Judgment.....App. 3

ARGUMENTS OF PETITIONER, CITY OF TAMPA ("CITY"), IN RESPONSE TO RESPONDENTS' BRIEF IN OPPOSITION

I. THE JUDGMENT OF THE COURT OF APPEALS IS FINAL AND A MANDATE HAS BEEN ISSUED.

Respondents assert, in their Brief in Opposition, that "A Court of Appeals' judgment or order is not final until issuance of a mandate, at which time the party's obligations become fixed." (Brief in Opp., p. 1-2.) In that regard, it should be noted that on December 10, 2001 the Eleventh Circuit Court of Appeals issued a mandate which states in relevant part:

> **JUDGMENT**
>
> It is hereby ordered, adjudged and decreed that the attached opinion included herein by reference, is entered as the judgment of this Court.
>
> Entered: September 21, 2001
> For the Court: Thomas K. Kahn, Clerk
> By: McCombs, Elaine

The judgment, moreover, has imprinted on it the words "ISSUED AS MANDATE DEC. 10, 2001, U.S. COURT OF APPEALS, ATLANTA, GA." (The judgment, issued as a mandate on December 10, 2001, is reproduced at Appendix "A".)

Accordingly, there should be no question that this Court has jurisdiction to review the judgment of the Court of Appeals pursuant to 28 U.S.C. § 1254(1).

II. THERE ARE NO GENUINE ISSUES OF MATERIAL FACT WHICH CAUSED THE ELEVENTH CIRCUIT TO REVERSE THE DISTRICT COURT'S ORDER.

Contrary to Respondents' assertion, that the District Court's Order was reversed because there were genuine issues of material fact, the District Court's Order was not reversed because of any genuine issues of material fact.

First of all, an examination of the Eleventh Circuit Opinion clearly reflects that the judgment of the District Court was reversed by the Eleventh Circuit, not because of any genuine issues of material fact, but rather because the Eleventh Circuit made a legal determination (albeit an erroneous legal determination) that the well established case law of the United States Supreme Court – which allows municipalities to keep adult entertainment establishments out of residential neighborhoods – is inapplicable to the staging and filming of adult entertainment on a residential premises where the adult entertainment is commercially transmitted over the internet to paying subscribers who may view the adult entertainment without physically attending the residential premises wherein the adult entertainment is being staged and filmed. This is strictly a legal issue and does not implicate any factual issues.

Secondly, it is important to note that there were no genuine issues of material fact as it related to the City's Motion for Final Summary Judgment. Indeed, the City – in support of its Motion for Final Summary Judgment – filed a separate "Statement of Undisputed Facts in Support of the City's Motion for Final Summary Judgment"; and the Respondents *never* filed a separate "Statement of

Disputed Facts," with citations to the record, disputing those facts in support of the City's Motion for Final Summary Judgment. In that regard, the Case Management and Scheduling Order issued by the District Court expressly provided that, "to the extent that the party opposing a motion for summary judgment disputes any facts asserted in the motion, a separate 'Statement of Disputed Facts,' with citations to the record, shall accompany the memorandum in opposition"; and the Case Management and Scheduling Order further provided that "all material facts set forth by the moving party *shall be deemed admitted* unless controverted by a separate Statement of Disputed Facts." (Emphasis supplied.) Accordingly, insofar as Respondents *never* filed a separate Statement of Disputed Facts, with citations to the record, all material facts set forth in the "City's Statement of Undisputed Facts in Support of the City's Motion for Final Summary Judgment" must be deemed admitted. (The "City's Statement of Undisputed Facts in Support of the City's Motion for Final Summary Judgment" is reproduced at Appendix "B".)

III. THE CITY IS NOT REGULATING THE INTERNET; RATHER THE CITY IS SIMPLY REGULATING THE LOCATION OF AN ADULT USE BUSINESS.

Contrary to the Respondents' suggestion, that the City is attempting to regulate the internet, it must be emphasized that the City is *not* regulating the content of speech or any other form of communication that is being disseminated over the internet; rather, the City is simply seeking to regulate the *location* of an adult use business.

In that regard, the Respondents may commercially broadcast adult entertainment over the internet 24 hours a day, 7 days a week; the City is merely seeking to regulate the *location* from where the adult entertainment is being staged and filmed such that it does not occur in a residential neighborhood.[1] Indeed, the record is clear that the Respondents may stage and film adult entertainment in other locations throughout the City[2] and the adult entertainment may be commercially broadcast over the internet 24 hours a day, 7 days a week.

The distinction between regulating the content of speech, and regulating the *location* of an adult use, has been recognized by the Supreme Court in a number of cases including *Reno v. American Civil Liberties Union*, 521 U.S. 844 (1997) wherein the Supreme Court observed that "In *Renton*, we upheld a zoning ordinance that kept adult movie theatres *out of residential neighborhoods*. The ordinance was aimed, not at the content of the films . . . but rather at the 'secondary effects' . . . *It is th[e] secondary effect which the zoning ordinances attempt to avoid, not the dissemination of 'offensive speech.'* " *Reno*, 521 U.S. at 867 (emphasis supplied) (quoting *Renton*, 475 U.S. at 49) (quoting *American Mini Theatres*, 427 U.S. at 71 n.34).[3]

---

[1] Under the City Code, adult uses are not permitted in a district zoned RS-60 Residential Single Family.

[2] Pursuant to the City Code, adult uses are permitted in the CI, IG and IH districts.

[3] It should further be noted that in *Reno*, unlike the case *sub judice*, the legislation at issue – the Communications Decency Act ("CDA") – imposed a "content-based blanket restriction on speech." 521 U.S. at 868. Moreover, the Supreme Court in *Reno* observed that "the purpose of the CDA is to protect children

Similarly, in the case at bar, the zoning ordinance is not aimed at the content of any speech but rather at the adverse secondary effects which the zoning ordinance attempts to avoid.[4]

Finally, the Respondents' citation to *United States v. Playboy Entertainment Group, Inc.*, 529 U.S. 803 (2000) is distinguishable and inapposite. In *Playboy Entertainment Group, Inc.*, the legislation at issue – the Telecommunications Act – imposed content-based restriction on speech whereas, in the matter at hand, the legislation at issue is wholly unrelated to the suppression of free expression. Indeed, the case *sub judice*, unlike *Playboy Entertainment*, merely involves regulating the *location* of an adult use

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from the primary effects of 'indecent' and 'patently offensive' speeeh rather than any 'secondary' effect of speech. Thus, the CDA is a content-based blanket restriction on speech and, as such, cannot be 'properly analyzed as a form of time, place and manner regulation.' " *Id.* at 868 (quoting *Renton*, 475 U.S. at 46.) In contrast, in the case *sub judice*, the City's zoning ordinance is unrelated to the suppression of free expression and merely regulates the *location* of adult uses which is a zoning issue.

[4] In that regard, the record below reflects that City Council was concerned about the adverse secondary effects of adult uses and was attempting to combat those secondary effects. Moreover, there is evidence in the record of adverse secondary effects in the residential neighborhood from the adult entertainment being staged and filmed at the residential premises. Indeed, the City's Petition for Writ of Certiorari discusses, at page 15, some of the adverse secondary effects which are associated with adult entertainment businesses in residential neighborhoods which may be found in the record below.

which is a zoning issue.[5] The City is not attempting to regulate the content of any speech or any other form of communication that is being disseminated over the internet.

IV. THE ISSUES PRESENTED ARE OF EXCEPTIONAL IMPORTANCE AND OF NATIONAL SIGNIFICANCE.

Contrary to the Respondents' assertion, that there are no issues of exceptional importance and that there is nothing about the Eleventh Circuit decision which in any way detracts from a municipality's ability to regulate adult businesses, this case is of exceptional national significance and the decision by the Eleventh Circuit does impair the City's ability to regulate adult businesses. Indeed, the Eleventh Circuit decision flies in the face of the well established case law of the United States Supreme Court which allows municipalities to keep adult

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[5] In *City of Renton v. Playtime Theatres, Inc.*, 475 U.S. 41 (1986), where the Supreme Court rejected the argument that the regulation of the location of an adult use constituted suppression of free expression, the Supreme Court stated in relevant part:

> *Renton* has not used the 'power to zone as a pretext for suppressing expression' . . . but rather has sought to make some areas available for adult theatres and their patrons, while at the same time preserving the quality of life in the community at large by preventing those theatres from locating in other areas. *This, after all, is the essence of zoning.*

475 U.S. at 54. (Emphasis supplied.)

entertainment establishments out of residential neighborhoods. *See City of Erie v. Pap's A.M.*, 529 U.S. 277 (2000); *City of Renton v. Playtime Theatres, Inc.*, 475 U.S. 41 (1986); *Young v. American Mini Theatres, Inc.*, 427 U.S. 50 (1976).

It should further be noted that, contrary to the Brief in Opposition, the Supreme Court has never held that the technological development of the internet has undermined, or made inapplicable, the well established case law of this Court which allows municipalities to keep adult entertainment establishments out of residential neighborhoods. Moreover, the Supreme Court has never held that the ability of patrons to view adult entertainment through the internet, without physically attending the residential premises wherein the adult entertainment is being staged and filmed, has impaired a municipality's ability to regulate the location of an adult use business where the adult entertainment is being staged and filmed on a residential premises.

Finally, this case is of national significance for the reason that the failure of this Court to address the questions set forth in the Petition for Writ of Certiorari may result in the proliferation of adult entertainment establishments – staging and filming adult entertainment 24 hours a day – in residential neighborhoods throughout the country and thereby creating adverse secondary effects in the residential neighborhoods where the adult entertainment is being staged and filmed.

CONCLUSION

For all of the aforesaid reasons, it is respectfully requested that this Court grant the Petition for Writ of Certiorari and resolve the vital questions which are the subject of the Petition.

DATED: February 4, 2002.

Respectfully submitted,

JAMES D. PALERMO, City Attorney
GINA K. GRIMES
Chief Assistant City Attorney
JERRY M. GEWIRTZ
Assistant City Attorney
Counsel of Record
Fifth Floor, City Hall
315 E. Kennedy Blvd.
Tampa, Florida 33602
(813) 274-8996

Attorneys for Petitioner

APPENDIX A

United States Court of Appeals
For the Eleventh Circuit

No. 00-16346

District Court Docket No.
99-02180-CV-T-24F

VOYEUR DORM, L.C., a Florida limited liability company, ENTERTAINMENT NETWORK, INC., a Florida corporation, AUTUMN DAWN MARENGER, 2D&K, INC.,

Plaintiffs-Appellants,

DAN MARSHLACK, SHARON GOLD MARSHLACK,

Plaintiffs,

versus

CITY OF TAMPA, FL, a Florida municipal corporation,

Defendant-Appellee.

Appeal from the United States District Court
for the Middle District of Florida

JUDGMENT

(Filed Sep. 21, 2001)

It is hereby ordered, adjudged, and decreed that the attached opinion included herein by reference, is entered as the judgment of this Court.

Entered: September 21, 2001
For the Court: Thomas K. Kahn, Clerk
By: McCombs, Elaine

[ISSUED AS MANDATE

DEC 10 2001

U.S. COURT OF APPEALS
ATLANTA, GA]

APPENDIX B

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

VOYEUR DORM, L.C., ET AL.

Plaintiffs,

vs.

THE CITY OF TAMPA, FLORIDA,

Defendant.
_____/

This pertains to a dispositive Motion

CASE NO. 99-2180-CIV-T-24F

DEFENDANT, CITY OF TAMPA'S, STATEMENT OF UNDISPUTED FACTS IN SUPPORT OF CITY'S MOTION FOR FINAL SUMMARY JUDGMENT

It is the position of the Defendant, City of Tampa ("City"), that the following facts – which are supported with citations to the record – should not be disputed:

1. On January 29, 1999 Plaintiffs' counsel, Mark Dolan, sent a letter to the City's Zoning Coordinator requesting her interpretation of the City Code as it applied to the activities occurring at 2312 West Farwell Drive, Tampa, Florida ("the premises").[1]

[1] A copy of this letter is attached to the Complaint as Exhibit "A" and is also contained within the certified documents of which the Court took judicial notice in the Order of November 2, 1999.

2. On February 12, 1999 the City's Zoning Coordinator, Gloria Moreda, responded to the aforesaid letter and stated in relevant part:

> The following generally describes the activities occurring on the property:
>
> 1. 5 unrelated women are residing on the premise.
>
> 2. 30 internet cameras are located in various rooms in the house; such as the bedrooms, bathrooms, living rooms, shower, & kitchen.
>
> 3. For a fee, internet viewers are able to monitor the activities in the different rooms.
>
> 4. The web page address is http://www.voyeurdorm.com/
>
> 5. The web page shows various scenes from the house, including a woman with an exposed buttocks. Statements on the page describe activities that can be viewed such as 'The Girls, of Voyeur Dorm are fresh, naturally erotic and as young as 18. Catch them in the most intimate acts of youthful indiscretion'.
>
> The web page can be found by going to Yahoo! and entering 'Voyeurdorm' on the search. The name of the web site is, itself, advertising the adult nature of the entertainment. Voyeur is defined in the *American Heritage Dictionary*, Second College Edition as 'A person who derives sexual gratification from observing the sex organs or sexual acts of others, especially from a secret vantage point'.

It is my determination that the use occurring at 2312 W. Farwell Dr., as described in your letter, is an adult use. Section 27-523 defines adult entertainment as:

> Any premises, except those businesses otherwise defined in this chapter, on which is offered to members of the public or any person, for a consideration, entertainment featuring or in any way including specified sexual activities, as defined in this section, or entertainment featuring the displaying or depicting of specified anatomical areas, as defined in this section; 'entertainment' as used in this definition shall include, but not be limited to, books, magazines, films, newspapers, photographs, paintings, drawings, sketches or other publications or graphic media, filmed or live plays, dances or other performances either by single individuals or groups, distinguished by their display or depiction of specified anatomical areas or specified sexual activities, as defined in this section.

Please be aware that the property is zoned RS-60 Residential Single Family and an adult use business is not a permitted use. You should advise your client to cease operation at that location.[2]

3. On or about April 12, 1999 Dan and Sharon Gold Marshlack[3] appealed the Zoning Coordinator's decision

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[2] A copy of the February 12, 1999 letter is contained within the certified documents of which Judge Bucklew has taken judicial notice pursuant to her Order of November 2, 1999.

[3] Dan and Sharon Gold Marshlack were originally parties to this action. On or about May 4, 2000 Plaintiffs filed an

to the City's Variance Review board. According to the Statement of Administrative Appeal filed by Mr. and Mrs. Marshlack, the section of the City Code which was appealed was "Section 27-523 as interpreted by Gloria Moreda, Zoning [Coordinator], in her letter of February 12,-1999."[4]

4. On July 13, 1999 an appellate hearing was held before the City's Variance Review Board. At that hearing, Dan and Sharon Gold Marshlack were represented by Plaintiffs' counsel, Mark Dolan, who conceded the following salient points at the July 13, 1999 hearing: that five women live in the house and there are cameras in the corners of all of the rooms of the house (n.t. 12); that "[f]or a fee you can join a membership to a web site wherein you can see them living 24 hours, seven days a week" (n.t. 12); that "[w]e do not take exception to the administrator's determination that, in fact, at times you can see someone disrobed over the Internet" (n.t. 12-13); that "the ladies receive free room and board, they get tuition to go to school and they do receive a stack amount" (n.t. 27-28); that "they are on 24 hours, seven days a week, so . . . from that perspective it is a performance . . . much like real TV or MTV" (n.t. 28); that "nudity . . . exists . . . there's no denying that" (n.t. 28);

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unopposed Motion to substitute 2D&H, Inc. for Dan and Sharon Gold Marshlack and said Motion was granted by the Court.

[4] The Statement of Administrative Appeal is attached to the Complaint as Exhibit "C" and contained within the certified documents of which the Court took judicial notice on November 2, 1999.

and that we "would not dispute that there is an enterprise going on, that these women are being paid, and you can see them over the Internet" (n.t. 30). At the conclusion of the hearing, the Variance Review Board voted unanimously to uphold the Zoning Coordinator's determination in this matter that the use occurring at 2312 West Farwell is an adult use.[5]

5. On July 18, 1999 Dan and Sharon Gold Marshlack filed an appeal from the decision of the Variance Review Board to the City Council. According to the appeal form filed by Plaintiffs Dan and Sharon Marshlack, the reason for appealing this decision was that the Zoning Coordinator failed to comply with the essential requirements of the law in her interpretation of §27-523 as applied to the facts.[6]

6. On August 26, 1999 an appellate hearing was held before Tampa City Council in this matter. At that hearing, Dan and Sharon Marshlack were once again represented by attorney Mark Dolan. Plaintiffs' counsel did not dispute, at the hearing, that there is a fee charged for viewing the women of the Voyeur Dorm; that the women are in fact disrobed; that they are part of a business enterprise; that Plaintiffs' counsel had requested an

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[5] A copy of the transcript from the Variance Review Board hearing is attached to the Complaint as Exhibit "D" and is contained within the certified documents of which the Court took judicial notice on November 2, 1999.

[6] A copy of the Appeal Form filed by Mr. and Mrs. Marshlack is attached as Exhibit "F" to the Complaint and contained within the certified documents of which the Court took judicial notice on November 2, 1999.

occupational license; and that these women were being paid. (See pages 19-20 of the transcript from the City Council hearing wherein Andrea Zelman, counsel for the Variance Review Board, summarized the factual testimony from the hearing before the Variance Review Board.) Indeed, Plaintiffs' counsel conceded that "I do not take any dispute with the facts that have been presented. I think what Ms. Zelman and Ms. Moreda said were correct regarding the facts." (See page 24 of transcript from City Council hearing.)[7] At the conclusion of the hearing, City Council voted unanimously to affirm the decision of the Variance Review Board which had upheld the determination of the Zoning Coordinator.[8]

7. The within action was filed in federal court by Plaintiffs on or about September 24, 1999.

8. The parties thereafter filed a Request that the Court Take Judicial Notice of certified documents and, on or about November 2, 1999, this Court granted the Request that the Court Take Judicial Notice of the documents filed by the parties.

9. The premises is located in a district zoned RS-60 Residential Single Family.[9]

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[7] A copy of the City Council transcript is attached to the Complaint as Exhibit "G".

[8] See page 30 of City Council transcript, attached as Exhibit "G" to Complaint.

[9] Exhibit "C" to the Complaint, which was executed by the property owners, Dan and Sharon Gold Marshlack, expressly identified the zoning district as RS-60. The Zoning Coordinator also confirmed this fact at her deposition. (See page 122 of Moreda deposition.) Moreover, Plaintiffs have admitted this fact

10. Approximately 25 to 30 different women have been employed at the premises.[10]

11. Voyeur Dorm, L.C. officially began its business operations in or about October, 1998 although Mr. Hammil (the Vice President of Entertainment Network, Inc.) believes that women were employed at the premises a few months prior thereto.[11]

12. Entertainment Network, Inc. is a managing member of Voyeur Dorm, L.C.[12]

13. The women that are employed at the premises appear on the Internet based web site voyeurdorm.com which is transmitted to subscribers 24 hours a day, seven days a week.[13]

14. The Plaintiff, Autumn Marenger, and other women employed at the premises, entered into Employment Agreements with Voyeur Dorm, L.C.[14] which provide, in general terms, that:

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in response to the City's First Request for Admissions in paragraph 2.

[10] See Hammil deposition, page 103.

[11] See Hammil deposition, page 46-47.

[12] See Complaint, paragraph 7; Hammil deposition, page 9.

[13] Marenger deposition, page 15; Freudigman deposition, page 7; West deposition, page 20; Martin deposition, page 6.

[14] The June 1, 1999 Employment Agreement between Plaintiff Autumn Marenger and Plaintiff Voyeur Dorm, L.C. is contained within deposition exhibit #53. (Marenger deposition, pages 435, 436, 469-471.) Employment Agreements, containing the same terms, were also executed by numerous other employees at the premises including, but not limited to, Tamara Freudigman (Freudigman deposition, pages 306-333), Ashley West (West deposition pages 37-56), Heather Martin (Martin

(a) In consideration of employee allowing Voyeur Dorm to commercially photograph and broadcast the images and likeness of employee, live over the Internet 24 hours a day, 7 days a week, Voyeur Dorm agreed to provide benefits to employee, as set forth in the Agreement, including providing compensation to employee and allowing employee to occupy and use a furnished bedroom and all common areas at the premises. (See last whereas clause on page 1 of the June 1, 1999 Employment Agreement; and paragraphs 2, 11 and 21 of the June 1, 1999 Employment Agreement.) (See Hammil deposition, page 78-87.)

(b) Employee acknowledged that the premises are, in addition to being the residence of employee, a stage and filming location for commercial internet broadcasting of the day to day activities of employee and other fellow employees 24 hours per day, 7 days a week. (See paragraph 9 of the June 1, 1999 Employment Agreement; Hammil deposition, pages 80-81.)

(c) Employee was prohibited from altering, moving or in any way interfering with the location or operation of the cameras at the premises. (See paragraph 10A of the June 1, 1999 Employment Agreement; Hammil deposition, page 81.)

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deposition, pages 30-60), Tiffany Angeli (Hammil deposition, pages 90-91), Nicole Hooper (Hammil deposition, page 94), Jennifer Jordan (Hammil deposition, page 95) and Kelly Permenter (Hammil deposition, pages 96-97). These Employment Agreements are contained within deposition exhibits 75, 82, 89, 131, 132, 133 and 134, respectively.

(d) Employee agreed to devote a number of hours per day, as set forth in the Agreement, to on-camera activities identified in the Agreement including, but not limited to, chatting, tanning, swimming, dressing, theme parties, special events, personal grooming and ablutions. (See paragraph 22 of the June 1, 1999 Employment Agreement; Hammil deposition, page 84.) (The word "ablution" is defined by Webster's Collegiate Dictionary, Tenth Edition, to mean "the washing of one's body or part of it;" and "the act or action of bathing." The employees that were deposed further testified that they understood the word "ablution" to mean bathing or showering. See Marenger deposition, pages 455-456; Freudigman deposition, page 317; West deposition, page 47; Martin deposition, pages 38-39.)

(e) Employee acknowledged that she had no reasonable expectation of privacy while on the premises and agreed to having her images and likeness commercially broadcast by Voyeur Dorm live over the Internet 24 hours a day, seven days a week. (See paragraph 27 of the June 1, 1999 Employment Agreement; Hammil deposition, page 87.)

(f) Employee agreed that she was not a tenant and waived any rights that she may have as a residential tenant. (See paragraph 28 of the June 1, 1999 Employment Agreement; Hammil deposition, page 87.)

(g) Employee authorized Voyeur Dorm to deduct specified sums from her weekly salary for, *inter alia*, unauthorized absence from the premises, unauthorized absence from chat, failure to participate in activities set

forth in the Agreement and covering or moving of cameras. (See Exhibit B to Employment Agreement; Hammil deposition, page 88.)

(h) Employee could be terminated at will whereupon employee would be required to immediately remove her personal property and leave the premises. (See paragraph 1 of the Employment Agreement; Hammil deposition, page 81.)

(i) Employee was not permitted or allowed any guests on the premises without the prior written consent of the Voyeur Dorm. (See paragraph 8 of the Employment Agreement; Hammil deposition, page 80.)

15. The Voyeur Dorm Employee Handbook provides, in general terms, that living in the Dorm is to be viewed as a full time job; that the women employed at the premises are required to work 5 days with 2 days off; that no one under the age of 18 is permitted on the premises; and that all friends must sign a disclosure prior to entering the premises.[15]

16. Voyeurdorm.com does not transmit any audio from the premises. (Marenger deposition, page 47; Freudigman deposition, pages 385-386.)

17. The Regulations of Voyeur Dorm, L.C., which was executed in or about October, 1998, provide in general terms that the business of the company included the operation of the premises for entertainment purposes (see paragraph 1.3 of Regulations of Voyeur Dorm, L.C.); and

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[15] See pages 2 and 6 of the Voyeur Dorm Employee Handbook which was marked as deposition exhibit #49.

that Entertainment Network, Inc. would supervise the production of the content including the hiring and firing of talent and performers. (See paragraph 3.3(1) of the Regulations of Voyeur Dorm, L.C.)[16]

18. The women that are employed at the premises, and appear on voyeurdorm.com, are compensated for their services as follows: they receive a weekly paycheck of approximately $400-$700 per week; plus health insurance; plus dental insurance; and free local phone service.[17] The employees also receive occasional bonuses.[18] The employees also receive free room and board.[19]

19. The women employed at the premises physically receive their paychecks at the premises.[20]

20. The subscribers to voyeurdorm.com pay $34.95 per month to watch the women employed at the premises.[21] In addition, subscribers pay an additional monthly fee of $16.00 to "chat" with the women employed at the premises.[22]

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[16] The Regulations of Voyeur Dorm, L.C., is marked as deposition exhibit #129. See also Hammil deposition, pages 53-66.

[17] Hammil deposition, pages 264-266; Marenger deposition, page 82-84; Freudigman deposition page 102-104.

[18] Hammil deposition, page 265; Marenger deposition, page 83; Freudigman deposition, page 102-104.

[19] Marenger deposition, page 84; Freudigman deposition, page 102-104.

[20] Hammil deposition, page 264; Marenger deposition, page 82; Freudigman deposition, page 103.

[21] Hammil deposition, pages 182, 183.

[22] Hammil deposition, page 182, 183.

21. Plaintiffs' counsel conceded at the Variance Review Board hearing that "it is a performance much . . . like Real TV or MTV."[23]

22. Plaintiffs' counsel, Mark Dolan, conceded on a videotape, that was produced by Plaintiffs to the City, that there is an aspect of the business operation going on at the premises.[24]

23. Plaintiff, Autumn Marenger, admitted at her deposition that she believed there is an aspect of a business operation going on at the premises.[25]

24. Women employed at the premises understood that they were providing entertainment for the subscribers of voyeurdorm.com.[26]

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[23] See page 28 of transcript of Variance Review Board hearing which is attached as Exhibit "D" to the Complaint.

[24] Marenger deposition, page 373-374.

[25] Marenger deposition, page 375.

[26] Ms. Freudigman testified that the display of uncovered female breasts, buttocks and pubic region were intended to entertain subscribers of voyeurdorm.com (Freudigman deposition, page 341); that each of the theme parties were intended to entertain subscribers of voyeurdorm.com (Freudigman deposition, page 301); that when she masturbated on camera at the premises that she did so to entertain the subscribers of voyeurdorm.com, (Freudigman deposition, page 342); and that she understood a number of the subscribers subscribed for the very purpose of watching specified sexual activity and specified anatomical areas, (Freudigman deposition, page 194). Ms. West testified that she understood subscribers were entertained when she masturbated on camera (West deposition, page 69, 70, 71); she further testified that the theme parties – which included a tattooing party, a pudding wrestling party, a cigar party, numerous lingerie parties, a body

25. Women employed at the premises characterized themselves as Internet models.[27]

26. A number of documents produced by Plaintiffs characterize the female employees as "Internet models."[28]

27. Voyeurdorm.com web pages, produced by Plaintiffs, state that "we like to call this a 24 hour live interactive TV show with some sexy nudity;"[29] that "the material Voyeur Dorm presents is of an explicit, sexual nature;"[30] and that you are about to purchase access to an adult oriented site. (The voyeurdorm.com web pages which refer to the site as being "adult oriented" are contained within deposition exhibit #84, pages 47 and 49.)

28. Charles Bruce Hammil, the Vice-President of Entertainment Network, Inc., has also affirmatively

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painting party, a human sundae party and a taffy party – were played live and then replayed for the purpose of entertaining subscribers (West deposition, pages 72-83). Ms. Martin also testified that each of the theme parties were played live on voyeurdorm.com and replayed on at least several occasions and that the intent was to entertain the subscribers. (Martin deposition, pages 83-84).

[27] Freudigman deposition, page 111, page 333; West deposition, page 55, 56, 58; Martin deposition; page 58; Hammil deposition, page 99.

[28] *Id.*

[29] The voyeurdorm.com web page in question is part of deposition exhibit #48, page 3.

[30] The voyeurdorm.com web page in question is part of deposition exhibit #84, page 3.

acknowledged that this is a 24 hour live interactive TV show with some sexy nudity.[31]

29. Keith Schram, the Assistant Manager in the business Tax Division for the City, testified that a business was being operated on the premises.[32]

30. One of the job responsibilities of women employed at the premises includes showering or bathing on camera.[33] During the course of showering or bathing on camera, the women's uncovered breasts, uncovered buttocks and uncovered pubic region were exposed to the cameras at the premises;[34] and that activity was intended to be displayed to the subscribers of voyeurdorm.com.[35]

31. One of the job responsibilities of women employed at the premises includes tanning on cameras.[36] During the course of tanning on camera, the women's uncovered breasts, uncovered buttocks and/or uncovered pubic region were exposed to the cameras at the

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[31] Hammil deposition, page 307.

[32] See Schram deposition, page 63-85.

[33] Marenger deposition, page 456-457; Freudigman deposition, page 77-78, 334; West deposition, page 60.

[34] Marenger deposition, page 103, 105, 36, 37; Freudigman deposition, page 155, 164, 334; West Deposition, page 60-61.

[35] Marenger deposition, page 36, 37, 103, 105; Freudigman deposition, page 155, 164, 334; West Deposition, page 60-61.

[36] Marenger deposition, page 455; Freudigman deposition, page 77, 164, 335; West Deposition, page 61.

premises[37]; and that activity was intended to be displayed to the subscribers of voyeurdorm.com.[38]

32. One of the job responsibilities of women employed at the premises includes chatting on camera with the subscribers.[39] During the course of chatting on camera, the women's uncovered breasts, uncovered buttocks and/or uncovered pubic region were exposed to the cameras at the premises;[40] and that activity was intended to be displayed to the subscribers of voyeurdorm.com.[41]

33. One of the job responsibilities of women employed at the premises includes swimming on camera.[42] During the course of swimming on camera, the women sometimes swam without a top on and their uncovered breasts were exposed to the cameras at the

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[37] Marenger deposition, page 103-108; Freudigman deposition, page 155-156, 164-165, 335; West Deposition, page 61.

[38] Marenger deposition, page 103-108; Freudigman deposition, page 155-156, 164-165, 335; West Deposition, page 61.

[39] Marenger deposition, page 453; Freudigman deposition, page 76, 335; West Deposition, page 61-62.

[40] Marenger deposition, page 103-108; Freudigman deposition, page 172-173, 335; West Deposition, page 62.

[41] Marenger deposition, page 103-108; Freudigman deposition, page 172-173, 335-336; West Deposition, page 62.

[42] Marenger deposition, page 455; Freudigman deposition, page 77, 337; West Deposition, page 64.

premises;[43] and that activity was intended to be displayed to the subscribers of voyeurdorm.com.[44]

34. One of the job responsibilities of women employed at the premises includes changing their clothes on camera.[45] During the course of changing their clothes on camera, the women's uncovered breasts, uncovered buttocks and uncovered pubic region were sometimes exposed to the cameras at the premises;[46] and that activity was intended to be displayed to the subscribers of voyeurdorm.com.[47]

35. One of the job responsibilities of women employed at the premises includes participating in theme parties and special events on camera including lingerie parties,[48] body painting parties,[49] human sundae

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[43] Marenger deposition, page 514-515, 487; Freudigman deposition, page 259-260, 337-338; West Deposition, page 64.

[44] Marenger deposition, page 514-515, 494; Freudigman deposition, page 260, 337-338; West Deposition, page 64.

[45] Marenger deposition, page 456; Freudigman deposition, page 77, 165-171, 338; West Deposition, page 72.

[46] Marenger deposition, page 103-108; Freudigman deposition, page 158, 165, 171, 338; West Deposition, page 72.

[47] Marenger deposition, page 103-108; Freudigman deposition, page 158, 165, 171, 172, 338; West Deposition, page 72.

[48] Freudigman deposition, page 282-291, 296, 338; West Deposition, page 73, 75, 76; Wright deposition, page 100, 102, 157-166.

[49] Marenger deposition, page 455, 458-459, 461; Freudigman deposition, page 294, 338; West Deposition, page 76; Wright deposition, page 102, 155-156.

parties,[50] a taffy party,[51] a pudding wrestling party,[52] tattooing and piercing parties[53] and a cigar party.[54] During the course of participating in theme parties and special events the women's uncovered breasts, uncovered buttocks and/or uncovered pubic region were exposed to the cameras at the premises;[55] and that activity was intended to be displayed to the subscribers of voyeurdorm.com.[56]

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[50] Marenger deposition, page 455, 486-488, 495, 496; Freudigman deposition, page 294-295, 338; West Deposition, page 73, 76; Wright deposition, page 102.

[51] Marenger deposition, page 455, 461-462; 497-498; Freudigman deposition, page 295, 338; West Deposition, page 76; Wright deposition, page 102.

[52] Freudigman deposition, page 294, 338; West Deposition, page 73, 76; Wright deposition, page 102; Martin deposition, page 75.

[53] Freudigman deposition, page 294, 338; West Deposition, page 76; Wright deposition, page 102.

[54] Freudigman deposition, page 294, 339; West deposition, page 76.

[55] Marenger deposition, page 276, 280, 304, 305, 359, 362, 458-462, 487-488, 495-498; Freudigman deposition, page 162, 169, 170, 213-219, 245, 253, 264, 265, 266, 274, 275, 276, 277, 286, 287, 288, 291, 292, 339; West Deposition, page 77-82; Wright deposition, page 155-166.

[56] Marenger deposition, page 458-462, 494-498; Freudigman deposition, page 163, 169, 170, 247, 250, 264, 265, 266, 277, 278, 279, 285, 283, 300, 339; West Deposition, page 82; Wright deposition, pages 155-166; Martin deposition, pages 74-84. Ms. Freudigman testified, moreover, that she personally observed some of these theme parties played on voyeurdorm.com (Freudigman deposition, pages 237, 240 and 247.) Ms. West testified, moreover, that the theme parties – above and beyond being displayed live over voyeurdorm.com –

36. The women employed at the premises were required to sleep on camera with night vision cameras on them;[57] and on some occasions some of the women slept without a top on and their uncovered breasts were exposed to the cameras at the premises[58] and intended to be displayed to the subscribers of voyeurdorm.com.[59]

37. The women employed at the premises sometimes walk around the premises with their uncovered breasts, buttocks, genitals and/or pubic region exposed to the cameras at the premises;[60] and that activity was intended to be displayed to the subscribers of voyeurdorm.com.[61]

38. The women employed at the premises sometimes went to the bathroom on camera at the premises.[62] On those occasions when the women went to the bathroom on camera, their uncovered breasts, uncovered

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were also replayed on the surprise cam. (West deposition, pages 92-93, 156.)

[57] Freudigman deposition, page 165-167, 339; West Deposition, page 84.

[58] Marenger deposition, page 105; Freudigman deposition, page 165-167, 339.

[59] Marenger deposition, page 105; Freudigman deposition, page 165-167, 339; West Deposition, page 84.

[60] Marenger deposition, page 103-108; Freudigman deposition, page 160, 168-169, 172, 339; West Deposition, page 86.

[61] Marenger deposition, page 103-108; Freudigman deposition, page 160-161, 168-169, 172, 339; West Deposition, page 86.

[62] Marenger deposition, page 103-108; West Deposition, page 86.

pubic region and/or uncovered buttocks were sometimes exposed to the cameras at the premises;[63] and that activity was intended to be displayed to the subscribers of voyeurdorm.com.[64]

39. The Plaintiff, Autumn Marenger, admitted at her deposition that when she took care of personal hygiene matters at the premises that her genitals, pubic region and buttocks were exposed to the cameras and displayed over the Internet;[65] that when she slept her genitals, pubic region and buttocks were on some occasions exposed to the cameras and displayed over the Internet;[66] that when she sunbathed nude at the premises that her genitals, pubic region and buttocks were exposed to the cameras and displayed over the Internet;[67] that when she showered or bathed at the premises that her genitals, pubic region, breasts and buttocks were exposed to the cameras and displayed over the Internet;[68] that when she went to the bathroom at the premises that her genitals, pubic region and buttocks were exposed to the cameras and displayed over the Internet;[69] that on some occasions she had appeared in the chat room with her breasts, genitals, or pubic region exposed to the cameras;[70] and

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[63] Marenger deposition, page 103-108; West Deposition, page 86-87.

[64] Marenger deposition, page 103-108.

[65] Marenger deposition, page 107-108.

[66] Marenger deposition, page 104, 107.

[67] Marenger deposition, page 103, 105, 106.

[68] Marenger deposition, page 103, 105, 106.

[69] Marenger deposition, page 104, 106 and 107.

[70] Marenger deposition, page 103, 104 and 106.

that when she changed her clothes at the premises that her genitals, pubic region, breasts and buttocks were exposed to the cameras and displayed over the Internet.[71] (See pages 103 through 108 of deposition testimony of Plaintiff, Autumn Marenger.)

40. Detective Dale DeBlock, Jr., of the Tampa Police Department, is a subscriber to voyeurdorm.com and he personally observed on voyeurdorm.com the display of uncovered breasts, uncovered buttocks and/or uncovered pubic regions relative to the activities that were occurring on the premises.[72]

41. Some women employed at the premises engaged in masturbation at the premises on camera; and that activity was intended to be displayed to the subscribers of voyeurdorm.com.[73]

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[71] Marenger deposition, page 103-104.

[72] DeBlock deposition, page 56-64.

[73] Freudigman deposition, page 133-148, 335-336, 341; West deposition, page 62-71. Ms. Freudigman affirmatively acknowledged that masturbation occurred at the premises with some frequency and regularity (Freudigman deposition at page 193, 341); that during the course of chatting with subscribers that she sometimes masturbated on camera and that activity was intended to be displayed to subscribers of voyeurdorm.com (Freudigman deposition at pages 335-336); that she understood from the subscribers that the subscribers watched her masturbate on camera (Freudigman deposition at page 146); that she observed several other employees at the premises masturbate on camera (Freudigman deposition at pages 134-145); and that when she masturbated on camera at the premises that she did so to entertain the subscribers of voyeurdorm.com (Freudigman deposition, page 342). Ms. West also affirmatively acknowledged that during the course of

42. Some women employed at the premises engaged in oral sex at the premises on camera; and that activity was displayed on voyeurdorm.com.[74]

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chatting that she sometimes masturbated on camera and that activity was intended to be displayed to subscribers of voyeurdorm.com (West deposition at page 62); and that 15% of her time on chat was spent masturbating (West deposition at page 65.) Ms. West further testified that she understood subscribers were entertained when she masturbated on camera at the premises. (West deposition at pages 69-71.)

[74] Ms. Freudigman testified that she personally observed the oral sex on voyeurdorm.com (Freudigman deposition at pages 118-120, 281). Ms. Freudigman testified, moreover, that she understood the term oral sex to mean "where two people use their mouths, place their mouths on their partner's genitals for sexual pleasure." (Freudigman deposition at page 118). Ashley West also testified that she personally observed the oral sex on voyeurdorm.com (West deposition at page 101-104). Ashley West further testified that she personally engaged in oral sex on camera, at the premises, on several occasions. (West deposition, pages 94, 102, 103, 104, 105.) Specifically, Ms. West engaged in oral sex with a man, on camera, on three or four occasions; and she also engaged in oral sex with a couple of women, on camera, at the premises. (West deposition, pages 94, 102, 103, 104 and 105.) Ms. West further testified that "oral sex is . . . someone else putting their . . . mouth and tongue against my pubic region or me doing it to someone else visa versa." (West deposition at page 93.) Dena Wright also testified that oral sex occurred on camera and was displayed on voyeurdorm.com (Wright deposition at pages 115-119). Ms. Wright also acknowledged that oral sex involves one human being placing his or her mouth or tongue on another human being's genital or pubic region relative to sexual pleasure or stimulation. (Wright deposition at page 115.) Finally, Ms. Wright testified that she had oral sex with five different women at the premises; that she engaged in oral sex with one of those women on *20 different occasions* at the premises; and that, with only one exception, the acts of oral sex occurred on camera, at the premises, and were

43. The Zoning Coordinator testified that the facts which are described in paragraphs 30-39, *supra*, and 41-42, *supra*, supported her determination that there was an adult use occurring at the premises.[75]

44. Some of the theme parties and special events that occurred at the premises are on videotapes which Plaintiffs produced to the City and which were marked as exhibits at depositions. Specifically, deposition exhibit #16 is a videotape of a body painting party that occurred at the premises; deposition exhibit 17 is a videotape of a "human sundae party" that occurred at the premises; deposition exhibit #19 is a videotape of a Victoria Secret party that occurred on the premises; and deposition exhibit #20 is a videotape of a taffy party that occurred on the premises. These videotapes, which were produced by Plaintiffs to the City, and which were filmed on the premises, speak for themselves and are the best evidence of their contents.[76]

45. The theme parties and special events were transmitted live to the subscribers and were also repeated a number of times for subscribers. In that regard, a former employee at the premises (who also served as the activities director for the theme parties and special events) testified that theme parties and special events were transmitted live and were replayed on a number of occasions for subscribers; and that she personally observed the

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displayed on voyeurdorm.com (Wright deposition, pages 115-119.)

[75] See Moreda deposition, pages 126-136.

[76] See City's Second Request for Admissions; and Plaintiffs' Response thereto, paragraph 1(b).

theme parties and special events on voyeurdorm.com.[77] The house mother, Dena Wright, also testified, that subscribers could see any of the theme parties and special events on the surprise cam which played 24 hours per day, 7 days a week.[78] In addition, other employees at the premises have also testified that theme parties were played live and were also replayed for the subscribers of voyeurdorm. (See West deposition, pages 72-83; Martin deposition pages 83-84; Wright deposition, pages 92-93; Freudigman deposition, pages 228-247.)

46. Plaintiffs' counsel himself stated on the record, at the deposition of Plaintiff Autumn Marenger, that "I am entirely willing to stipulate that the contents of this video, which has been identified as . . . exhibit #16 . . . contains entertainment featuring or in any way including specified sexual activities . . . or entertainment featuring the displaying or depicting of specified anatomical areas as defined in Chapter 27."[79]

47. The voyeurdorm.com web pages have, on one or more occasions, advertised or described the Voyeur Dorm with the following language:

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[77] Freudigman deposition, page 228, 229, 231, 232, 237, 239, 240, 242, 247. Ms. Freudigman served as the activities director between June, 1999 and September, 1999. (Freudigman deposition, pages 304-305, 404.)

[78] See Wright deposition, page 92-93.

[79] This comment by Plaintiffs' counsel occurred at the deposition of Plaintiff Autumn Marenger, taken on April 20, 2000, while deposition exhibit #16 was being shown at the deposition. (See Marenger deposition, page 339-340.) (Deposition #16 is a videotape of a body painting party that took place at the premises.)

(a) Peer into The Private Lives of Seven Real College Coeds. They Live in Voyeur Dorm. Their Lives Are On Camera 24 Hours A Day. You Choose The View From 26 Hidden Cameras. Enter Their Bedrooms When They Sleep. Spy On Them in Their Bathrooms. Nothing is Of Limits. There Are No Taboos. The Girls of Voyeur Dorm Are Fresh, Naturally Erotic And As Young As 18. Catch Them in The Most Intimate Acts of Youthful Indiscretion. Want To Find Out More? Meet Them In Live Chat Sessions. Their Privacy Is Your Pleasure. Voyeur Dorm. New Secrets Are Bared Every Day.[80]

(b) As A Member Of Our Voyeur Family You Immediately Receive Complete, 24-Hour Access To Every Camera In Our House. We Don't Mind If You Watch Us Shower, Work Out, Nude Sunbathe, Change Our Clothes, Take Bubble Baths, Party With Our Friends, Sleep, Watch TV, Study (Ugh!) And Answer Nature's Occasional Calls In The Bathroom. We Never Know What's Going To Happen. Voyeur Dorm is All About Girls Being Girls. Join Now. We Can't Help It If You Catch Us With Our Panties Down.[81]

(c) We would like to invite everybody to come share our young Lives with us. This is the first Live Voyeur Web Site of this kind and we are very proud and excited to be chose to be part of it. Voyeur Dorm Has Eight Sexy Young College Girls Living Live On Camera 24 hrs A Day. We have Live Hidden Cameras in Every Room in

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[80] See City's First Request for Admission and Plaintiffs' response thereto, paragraph 24(a).

[81] See City's First Request for Admission and Plaintiffs' response thereto, paragraph 24(b).

Our House. With A Total of 30 Live Hidden Cameras Around the House There is A View That Will Surely Please Everyone. As A Member of Our Voyeur Family You Will Be Granted Full Access To Every Camera In our House. We like to call this a 24 Hour live Interactive TV show with some Sexy Nudity. Come Spy on Us as we Eat, Cook, Shower, Clean, Study, Change our Clothes, Workout, Sunbathe Nude, Do our makeup, Date our Boys, Take Bubble Baths, And Watch TV, And Even Sleep.[82]

(d) With 30 Live Cameras To Choose From You'll Never Be Left Without a Sexy View. I Especially Enjoy Sunbathing In The Nude As Often As Possible, Come Check Me Out. My Name is Lily.[83]

(e) I think it is sexy and erotic knowing your watching me. We were the first to put Night Vision Cams in our Bedrooms and will be adding more special cameras soon. Girls have wet dreams too. I think it's sexy and erotic knowing you're watching me when I sleep. Will you tell me if my fingers are naughty when I'm having an X-rated dream? Come watch me Sleep!![84]

(f) This is the first live college dorm site ever. Our experiment in real Voyeurism is making history. We're too young to follow rules, so

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[82] See City's First Request for Admission and Plaintiffs' response thereto, paragraph 24(c).

[83] See City's First Request for Admission and Plaintiffs' response thereto, paragraph 24(d).

[84] See City's First Request for Admission and Plaintiffs' response thereto, paragraph 24(e).

we're doing our own. Is it wrong to share our youthful innocence with the world? Please don't judge us until you've seen for yourself. I'm not ashamed to show you my body. Are you embarrassed to watch? Don't be. Become a member and join the fun.[85]

(g) In our chat room we get lots of cool suggestions for fun things to do. Last week some guy from New York suggested Drunk Twister . . . Well it sounded like Fun. Hearing from you – even your freakiest thoughts – makes our day. Join Now[86]

(h) I'm Kim, and I just moved in to the dorm last October. I'm sort of nervous, being new and all. Is it weird that I kind of dig taking my clothes off in front of the shower cam? I'm compulsive about chatting on the internet. I hope you'll talk to me and let me know how I'm doing.[87]

(i) We Are Not Strippers, Or Dancers. We Are Seven Young College Girls Who Want To Share Our Most Intimate Secrets With The Entire World.[88]

(j) Hi my name is Tiffany I'm 22 and love to cook for all my sexy girlfriends. I especially love it when young Brandi helps me. . . . she loves

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[85] See City's First Request for Admission and Plaintiffs' response thereto, paragraph 24(f).

[86] See City's First Request for Admission and Plaintiffs' response thereto, paragraph 24(g).

[87] See City's First Request for Admission and Plaintiffs' response thereto, paragraph 24(h).

[88] See City's First Request for Admission and Plaintiffs' response thereto, paragraph 24(i).

> walking around the house Naked!! I hope she's not a lez. I don't know if I could stop myself. Join Now[89]
>
> (k) Remember we are LIVE 7 days a week, 24 HOURS a day, all YEAR long, you never know what you might catch us doing!! Join me Kim Now.[90]
>
> (l) We have lots of Fun and Sexy events that we do live on the Internet for our Viewers. One of our favorite things is Chick Night that's when we sit around in our Sexy Lingerie and drink wine and talk about boys and sex and what we want for Christmas. Have you ever wondered what chicks do when we're really alone? Betcha can't guess what happened last week. We'll never live that down. Join Now.[91]

(Emphasis in original.)

48. The voyeurdorm.com web pages that have been produced by Plaintiffs to the City – and which are marked as deposition exhibit 84 – provide, in general terms, that:

> (a) You must be 18 years old or older to view this site.[92]

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[89] See City's First Request for Admission and Plaintiffs' response thereto, paragraph 24(j).

[90] See City's First Request for Admission and Plaintiffs' response thereto, paragraph 24(k).

[91] See City's First Request for Admission and Plaintiffs' response thereto, paragraph 24(l).

[92] See deposition exhibit #84, page 1.

(b) The material Voyeur Dorm presents is of an explicit, sexual nature.[93]

(c) Subscribers can spy on the women as they eat, cook, shower, clean, study, change their clothes, work out, sun bathe nude, do their makeup, date their boys, take bubble baths and watch TV and even sleep.[94]

(d) The site is an adult oriented site.[95]

49. According to other voyeurdorm.com web pages produced by the Plaintiffs to the City, marked as deposition exhibit 48, the voyeurdorm.com web pages state, inter alia, that:

(a) When you join us you will immediately receive complete 24 hour access to every camera in our house. You can watch us shower, sleep, take bubble baths, get ready to go out, party with our friends, work out, study (Ugh!) and hang out with our girlfriends for chick time.[96]

(b) As a member of our Voyeur family you will be granted to every camera in our house. We like to call this a **24 hour live interactive TV show with some sexy nudity**. Come spy on us as we eat, cook, shower, clean, study, change our clothes, work out, sun bathe nude, do our makeup, date our boys, take bubble baths, and watch TV and even sleep.[97] (Emphasis in original.)

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[93] See deposition exhibit #84, page 3.

[94] See deposition exhibit #84, page 6.

[95] See deposition exhibit #84, page 47 and 49.

[96] See deposition exhibit #48, web page 1.

[97] See deposition exhibit #48, web page 3.

50. More than five individuals – that are not related by blood, marriage or adoption – have resided on, and been employed on, the premises at the same time.[98]

51. According to Mr. Hammil, and the women employed at the premises, there are approximately 40 cameras located on the premises.[99]

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[98] According to the deposition testimony of the Plaintiffs and their employees, more than 5 employees have resided at the premises at the same time. (See Marenger deposition, page 9-11; Hammil deposition, page 185-186; Freudigman deposition, page 393.) Plaintiff Marenger testified that, including herself, there were eight women living on the premises at the same time (Marenger deposition pages 9-11); and that during the time that she lived on the premises that only two employees had been related to each other by blood, marriage or adoption and that those two individuals did not live on the premises at the same time (Marenger deposition, page 115.) Mr. Hammil testified that there were eight women living on the premises in December of 1998 or January of 1999 and that none of those women were related to each other (Hammil deposition, pages 207-208). Mr. Hammil further testified that, to the extent that any employees at the premises may have ever been related, they lived on the premises at different times. (Hammil deposition, pages 211-212.) Ms. Freudigman similarly testified that – including herself – six to eight women lived on the premises and that, to the best of her knowledge, none of the women were related by blood, marriage or adoption. (Freudigman deposition, page 393.) Finally, the voyeurdorm.com web pages which have been produced by Plaintiffs to the City expressly reflect that six or more women lived on the premises. (See deposition exhibit #48, at web pages #1 and 2; and deposition exhibit #84 at web page #2.)

[99] See Hammil deposition, pages 147, 195; Freudigman deposition, page 210; West deposition, page 162; Wright deposition, page 162; Wright deposition, page 146; Martin deposition, page 176-182; Marenger deposition page 504. See

52. The cameras at the premises have been located in bedrooms, bathrooms, showers, the living room, the dining room, the kitchen, the tanning room, the gym, patio and pool.[100] The cameras have been set up to attempt to capture or track the activities in each of these rooms and areas where the cameras are located.[101]

53. There are night vision cameras on the premises.[102]

54. The number of subscribers to voyeurdorm.com increased from approximately 5,000, in its inception in 1998, to approximately 30,000 in January, 2000.[103]

55. David Marshlack is currently the President of Entertainment Network, Inc.,[104] and Charles Bruce Hammil is currently the Vice-President of Entertainment Network, Inc.[105]

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also deposition exhibits #55, 74, 90 which were prepared by deponents who had been employed at the premises.

[100] *Id.* See deposition exhibits #55, 74, 90 which were prepared by deponents who had been employed at the premises.

[101] See Freudigman deposition, pages 72, 86, 157, 170, 171; Hammil deposition, page 152-153; Marenger deposition, pages 19-23; West deposition, page 162; Wright deposition, page 145.

[102] See Hammil deposition, page 189.

[103] See Hammil deposition, page 131-132.

[104] See Hammil deposition, page 65.

[105] See Hammil deposition, page 8.

56. David Marshlack, Charles Bruce Hammil and Dan Marshlack are equal shareholders in Entertainment Network, Inc., Voyeur Dorm, L.C. and 2D&H, Inc.[106]

57. Entertainment Network, Inc. is a leading supplier of adult material for the Internet.[107]

58. Mr. Hammil is one of the founders and co-owners of the Voyeur Dorm.[108]

59. The majority of the women who have been employed on the premises, and have appeared on voyeurdorm.com, have not attended college while employed at the premises.[109]

60. Entertainment Network, Inc. is currently in the process of negotiating with several movie producers to produce a movie relative to the Voyeur Dorm which will include the subject matter of this litigation.[110]

61. The controversy surrounding this lawsuit has "sweetened the pot" relative to the movie which is being negotiated.[111]

62. The controversy surrounding the litigation has been a publicity bonanza to Plaintiffs.[112]

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[106] See Hammil deposition, page 18.

[107] See Hammil deposition, page 153.

[108] See Hammil deposition, page 10-11.

[109] See Hammil deposition, page 266; West deposition, page 122.

[110] See Hammil deposition, page 135-145.

[111] See Hammil deposition, page 140.

[112] See Hammil deposition, page 180-181.

63. The Voyeur Dorm has been the subject of media coverage including coverage on ABC, NBC, MSNBC, CNBC, CBS, FOX, Geraldo, Roseanne, Kathy Fountain, 20/20, Hardcopy, Extra, Howard Stern, Good Morning America, Jenny Jones, Inside Edition, Philly After Midnight, Leeza, Internight with John Gibson, local Channel 9, local Channel 7, local Channel 11, local Channel 14, Hanity & Colmes, Full Nelson, Today Show, Pros and Cons, as well as TV shows in Japan (TV Asahi) and news coverage in Germany.[113]

64. According to Mr. Hammil, on 15 to 20 occasions television crews or television reporters have come to the premises[114] and, in addition, newspaper writers have come out to the premises on approximately 15 occasions.[115]

65. According to Plaintiff Autumn Marenger, ABC, NBC, CBS, Bay News 9 and FOX have each visited the premises approximately five times each; there were approximately 20 different occasions when the media visited the premises when she was present; and typically there was a reporter and a camera person present in connection with the visits by the media.[116]

66. According to Ashley West, a former employee at the premises, she was interviewed at the premises approximately 30 times by the media. (West deposition, page 150-154.)

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[113] See Hammil deposition, page 249-256.

[114] See Hammil deposition, page 250-256.

[115] See Hammil deposition, page 259.

[116] See Marenger deposition, pages 176-179, 578.

67. The media representatives that have visited the premises have been given passwords to voyeurdorm.com.[117]

68. According to Plaintiffs' Rule 26(a)(1)(C) Disclosure, "the only element of damages being sought by Plaintiffs at this time is for the abstract value of constitutional rights which Plaintiffs allege have been violated by Defendants."[118]

69. All documents produced by Plaintiffs, pursuant to the Court's Order of April 19, 2000, are genuine.[119]

70. Detective DeBlock of the Tampa Police Department, pursuant to conducting an official investigation in this matter, has learned that complaints have been made relative to the activities at the premises. The nature of these complaints are identified by Detective BeBlock in his deposition. (See DeBlock deposition at pages 8, 9, 12, 13, 14, 15, 16, 17, 24, 25, 40, 41. These complaints are also identified by the Zoning Coordinator in the City's Response to Plaintiffs' First Set of Interrogatories, paragraph 15.)

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[117] See Hammil deposition, page 263-264.

[118] Plaintiffs' Rule 26(a)(1)(C) Disclosure was served on the City on January 26, 2000.

[119] On May 10, 2000 the City served its Fourth Request for Admissions upon Plaintiffs' counsel wherein the City requested Plaintiffs to admit the allegation that "all documents produced by Plaintiffs pursuant to the Court's Order of April 19, 2000 are genuine." Plaintiffs' counsel never filed a response thereto and, accordingly, the request has been deemed admitted.

71. The videotape produced by Plaintiffs, which is marked as deposition exhibit 36 ("Inside Edition"), identifies a neighbor by the name of Anthony Garcia who complains about the activities at the premises. In that regard, Mr. Garcia states "I want them out of the neighborhood." (See also City's Answers to Plaintiffs' First Set of Interrogatories, paragraph 15.)

72. The videotape produced by Plaintiffs, which is marked as deposition exhibit 25 ("Geraldo"), identifies two neighbors – a man and a woman – who also articulate concerns relative to the activities at the premises. In that regard, the woman states words to the effect that "I think it's sickening;" and the man acknowledges that it is most definitely an adult business. (See also City's Answers to Plaintiffs' First Set of Interrogatories, paragraph 15.)

73. The videotape produced by Plaintiffs, which is marked as deposition exhibit 41-2 ("MSNBC" Internight with John Gibson"), identifies a neighbor by the name of Gail Martinez who can be seen complaining about the activities on the premises. She states, among other things, that she doesn't like it; that she has a child who is underage; and that she is scared. (See also City's Answers to Plaintiffs' First Set of Interrogatories, paragraph 15.)

74. According to the Employee Handbook for the Voyeur Dorm, which was produced by Plaintiffs to the City, it states that friends should park in back if room permits or at the doctor's office;[120] and, according to the

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[120] See page 7 of the Voyeur Dorm Employee Handbook which was marked as deposition exhibit #49.

deposition testimony of Mr. Hammil, he never asked the doctor or his staff whether it was permissible for the employees of the Voyeur Dorm – or the friends of the employees – to park their vehicles at the doctor's office. (See Hammil deposition, page 227.)

75. A former employee of the Voyeur Dorm (who has been identified by the Plaintiffs as Tori),[121] appears on a videotape, produced by Plaintiffs, and this former employee makes complaints to the effect that the women at the Voyeur Dorm were "all being exploited;" and "all encouraged to take their clothes off." This videotape is marked as deposition exhibit #23 and is a tape from the Kathy Fountain show.

76. There is an Incident Report prepared by the Tampa Police Department reflecting an alleged battery that occurred at the premises on January 24, 1999.[122]

77. Plaintiffs' experts, in preparing their written reports, did not review any of the deposition transcripts in this matter. (Fisher deposition, page 10; Danner deposition, page 26; Schauseil deposition, page 12.)

78. Plaintiffs' experts, in preparing their written reports, did not review any of the videotapes of the depositions taken in this matter. (Fisher deposition, page 10; Danner deposition, page 26-27; Schauseil deposition, page 14.)

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[121] At Mr. Hammil's deposition, he identified this former employee as Tori. (See Hammil deposition, page 267-276.)

[122] This police report is identified as Report #99-06378 and has previously been produced to Plaintiffs.

79. Plaintiffs' experts, in preparing their written reports, did not review any of the deposition exhibits in this matter. (Fisher deposition, pages 10-11; Danner deposition, page 26; Schauseil deposition, page 14.)

80. Plaintiffs' experts, in preparing their written reports, did not review the City's Response to Plaintiffs' First Set of Interrogatories. (Fisher deposition, page 11-12; Danner deposition, page 27; Schauseil deposition, page 14.)

81. Plaintiffs' experts, in preparing their written reports, did not review the City's Response to Plaintiffs' First Request for Admissions. (Fisher deposition, page 12; Danner deposition, p 28-29; Schauseil deposition, page 15.)

82. Plaintiffs' experts, in preparing their written reports, did not interview any of the subscribers to voyeurdorm.com. (Danner deposition, page 29; Schauseil deposition, page 15.)

83. Plaintiffs' experts, in preparing their written reports, did not interview any of the neighbors. (Danner deposition, page 29; Schauseil deposition, page 15.)

84. Plaintiffs' experts, in preparing their written reports, were unaware of complaints that had been made about the activities at the premises and did not interview any individuals that made such complaints. (Fisher deposition, pages 68-75; Danner deposition, page 29; Schauseil deposition, page 50-57.)

85. Plaintiffs' experts, in preparing their written reports, did not consider the Supreme Court's decision in *Young v. American Mini Theatres, Inc.*, 427 U.S. 50 (1976).

(This document was received and filed by Tampa City Council and is marked as deposition exhibit $167.) (Fisher deposition, page 181; Danner deposition, page 266; Schauseil deposition, page 199-200.)

86. Plaintiffs' experts, in preparing their written reports, did not consider this Court's Order dated February 5, 1996 in *Specialty Malls of Tampa v. City of Tampa*, 916 F.Supp. 1222 (M.D. Fla. 1996). (A copy of this Order was marked as deposition exhibit #164.) (Fisher deposition, page 172; Danner deposition, page 274; Schauseil deposition, page 200.)

87. Plaintiffs' experts, in preparing their written reports, did not consider this Court's Order dated November 13, 1994 in *Specialty Malls of Tampa, supra*. (A copy of this Order was marked as deposition exhibit #165.) (Fisher deposition, page 174; Danner deposition, page 274-275; Schauseil deposition, page 200.)

88. Plaintiffs' experts, in preparing their written reports, were unaware of the women's employment responsibilities as set forth in the employment agreements; and were unaware that the employees were required – pursuant to their employment obligations – to shower or bathe on camera, change their clothes on camera, tan on camera, swim on camera and participate in a variety of theme parties and special events on camera wherein employees displayed their uncovered breasts, uncovered buttocks and/or uncovered pubic regions. (Fisher deposition, pages 137-147; Danner deposition, page 188, 189, 193, 194; Schauseil deposition, page 78-84.)

89. Plaintiffs' experts, in preparing their written reports, were unaware that – according to the employment agreements – the premises were to be used as a stage and filming location for commercial Internet broadcasting 24 hours per day, seven days per week. (Danner deposition, page 232; Fisher deposition, pages 137-138; Schauseil deposition, page 68-69.)

90. Plaintiffs' experts, in preparing their written reports, were unaware that according to the employee handbook that living at the premises was to be treated as a full-time job; and that all visitors to the premises must be 18 years old or older and sign a consent form. (Fisher deposition, page 139-140; Danner deposition, pages 149, 241, 198-199; Schauseil deposition, page 94-95.)

91. Plaintiffs' experts, in preparing their written reports, were unaware that the women employed at the premises characterized themselves as Internet models. (Danner deposition, page 242; Schauseil deposition, page 86.)

92. Plaintiffs' experts, in preparing their written reports, were unaware that the women employed at the premises could be terminated at will and had expressly agreed that they were not a tenant at the premises. (Fisher deposition, pages 140-141; Danner deposition, pages 239-240; Schauseil deposition, page 77.)

93. During the period of August, 1998 to June, 2000, the Voyeur Dorm generated subscriptions and sales in the amount of $3,166,551.35. This information is reflected in a June 8, 2000 memo from Plaintiff, Entertainment Network, Inc. to Plaintiffs' counsel, Luke Lirot. (Plaintiffs'

counsel, Mr. Lirot, furnished a copy of this memo to the City.)

94. Adult uses are not permitted in a district zoned RS-60 Residential Single Family. (See Moreda deposition, page 122; see also deposition exhibit 101.)

95. Plaintiffs' expert criminologist, Dr. Danner, testified that – according to his own study – there was an 11.2% increase in calls for service to the Tampa Police Department in the area of the premises after the Voyeur Dorm began its operation at the premises. (See Danner deposition, page 221.)

96. Plaintiffs' expert criminologist, Dr. Danner, testified that the increase in calls for service to the Tampa Police Department could have been as a result of the activities occurring at the premises, or it may not have been, and that he was not in a position to definitively rule out the possibility that the activities at the premises caused the increase in calls for service to the Tampa Police Department. (Danner deposition page 222.)

97. Plaintiffs' expert criminologist, Dr. Danner, testified that college age students cause crime and that "every time you put six or more of them in a place, you are going to have problems because they are at the age of risk when they do things that create problems." (Danner deposition, page 259.)

98. Plaintiffs' expert criminologist, Dr. Danner, testified that the age range of the women at the premises "is roughly college student age." (Danner deposition, page 259.)

99. The voyeurdorm.com web pages, which have been produced by the Plaintiffs to the City, further reflect that there are six or more women at the premises and that their age range is 18-22. (See deposition exhibit #48, at web page #1 and #2; and deposition exhibit #84, at web page #2.)

Respectfully submitted,

JAMES D. PALERMO
CITY ATTORNEY, CITY OF TAMPA

By /s/ Jerry Gewirtz
Jerry M. Gewirtz,
Trial Counsel
Assistant City Attorney
Florida Bar No. 0843865
5th Floor, City Hall
315 E. Kennedy Boulevard
Tampa, Florida 33602
813/274-8996
Attorney for Defendant
City of Tampa

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by hand delivery on this 31st day of July, 2000, to Luke Charles Lirot, Esquire

and Mark Dolan, Esquire, 112 East Street, Suite B, Tampa, FL 33602.

/s/ Jerry Gewirtz
Jerry M. Gewirtz
Assistant City Attorney